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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/535,360	10/06/2005	Henry Petersen	A5-1952	3912
27127	7590	09/12/2006	EXAMINER	
HARTMAN & HARTMAN, P.C. 552 EAST 700 NORTH VALPARAISO, IN 46383			HOOK, JAMES F	
			ART UNIT	PAPER NUMBER
			3754	

DATE MAILED: 09/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/535,360

Applicant(s)

PETERSEN ET AL.

Examiner

James F. Hook

Art Unit

3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 3/4/06.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Priority***

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Specification***

The abstract of the disclosure is objected to because it is more than one paragraph in length, not on a separate page, and contains legal phraseology such as "said". Correction is required. See MPEP § 608.01(b).

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-11 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Kauder.

Claims 1-11 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Muller.

Claims 1-11 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Lupke.

Claims 1-11 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Jung.

Claims 1-3 and 5-11 are rejected under 35 U.S.C. 102(e) as being anticipated by Katayama. The patent to Katayama discloses the recited flexible tubular metal device which inherently has an internal diameter up to 60 millimeters based upon the tube being used to convey fuel or refrigerant and such being known to be at least smaller in diameter than 60 millimeters, there are one or more corrugated convolutions where the innermost wall is made of metal including stainless steel which is a metal alloy, and is formed with corrugations that change positions from first to second sections-where the first sections can be seen to be at least 10% longer than the length of the second sections, the outside surface is seen to have a non-constant curvature, the curve is continuous in the first and second sections and defined by an intersection of the outside surface and a plane through a longitudinal axis of the device, the sign of the curvature changes only once, from the figures it is seen that the length of sections is at least 50% between the first and second sections, there is at least 20% less curvature angle in the top convolutions from the bottom portions, the curve has global maximums and minimums at the top and bottom portions, the curve is seen to have a local minimum curvature between each adjacent pair of top and bottom portions, the curve is symmetric about a perpendicular axis, a majority of the convolutions are substantially identical, the article is made of a metal alloy, it is immaterial in an article claim as to

what method is used to form the hose therefore such does not hold any patentable weight at this time.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Katayama. The patent to Katayama discloses in either the drawings or specification the recited structure set forth above with the exception of disclosing a pitch to height ratio range, however such is considered to be merely a choice of mechanical expedients where it would have been obvious to one skilled in the art to use routine experimentation to arrive at optimum values for the pitch-height ratio that would meet the needs of the user as such only requires routine skill in the art.

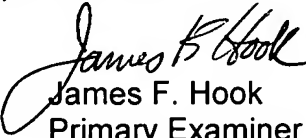
### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The references to Furuta, Sibthorpe, Withers, Jr., Meserole, Netzel, Sakaya, Kanao, Wood, and Kashy disclosing state of the art bellows and corrugated tubing.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James F. Hook whose telephone number is (571) 272-4903. The examiner can normally be reached on Monday to Wednesday, work at home Thursdays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
James F. Hook  
Primary Examiner  
Art Unit 3754

JFH